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an executory contract to convey real estate, the rights of the parties rest thereafter solely in the deed, although the deed varies from the one provided for in the contract, and the law remits the grantee to his covenants in his deed, if there has been no fraud or mistake.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 266; Dec. Dig. § 94.* 9 Va.-W. Va. Enc. Dig. 785.]

8. Evidence (§ 442*)—Parol Evidence—Actions—Admissibility of Evidence.—An agreement for the transfer of certain property, including a manufacturing plant, specified that the plant was to be in good working condition when turned over, and that it was subject to the inspection of the party purchasing it as to its condition and working order before the acceptance of the deed. In an action by the purchaser for damages because the plant was not in working order, defendants offered in evidence an agreement between the parties, entered into at the time the deed was made, which provided that certain matters, including some that were specified as a cause of action by plaintiff, were reserved for future adjustment. Held, that the agreement was admissible in evidence.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1874-1899; Dec. Dig. § 442.* 10 Va.-W. Va. Enc. Dig. 704.]

Judgment reversed. All the judges concur.

FITZGERALD et ux. v. FRANKEL et al.

June 10, 1909.

[64 S. E. 941.]

1. Fraud (§ 58*)—Evidence—Presumptions.—Fraud is not to be assumed on doubtful evidence or suspicious circumstances, but must be alleged and clearly proved.

[Ed. Note.—For other cases, see Fraud, Cent. Dig. §§ 55-59; Dec. Dig. § 58.* 6 Va.-W. Va. Enc. Dig. 508.]

2. Fraud (§ 58*)—Evidence—Sufficiency.—A transaction may of itself and by itself furnish the most satisfactory proof of fraud so conclusive as to outweigh the answer of defendants or even the evidence of witnesses, and circumstances attending and following a transaction are often such as to leave not even a shadow of a doubt as to the real object or motive of the parties engaged therein.

[Ed. Note.—For other cases, see Fraud, Cent. Dig. §§ 55-59; Dec. Dig. § 58.* 6 Va.-W. Va. Enc. Dig. 511.]

3. Fraud (§ 11*)—Fraudulent Representations—Matters of Fact or of Opinion.—A matter of opinion may amount to an affirmation, and be an inducement to a contract, especially where the parties are not dealing on equal terms, and one of them has, or is presumed to have, means of information not clearly open to the other.

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

[Ed. Note.—For other cases, see Fraud, Cent. Dig. §§ 12, 13; Dec. Dig. § 11.* 6 Va.-W. Va. Enc. Dig. 454.]

4. Vendor and Purchaser (§ 44*)—Reliance on False Representation—Sufficiency of Evidence.—If a purchaser has not equal means or information with the vendor, in a case in which he has a right to rely on a false representation, the evidence to show that he did not rely thereon must be of the clearest and most satisfactory character and leave no room for inference or implication.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. § 76; Dec. Dig. § 44.* 6 Va.-W. Va. Enc. Dig. 468.]

5. Exchange of Property (§ 3*)—Ratification of Fraudulent Transaction—Acceptance of Rent.—If, after a party, defrauded of his property by an exchange thereof for an equity in certain real estate, became mentally irresponsible on realizing what he was about to lose, he accepted rent sent by the agent of the owner of the property traded for, after the agent had been informed that he was insane, it cannot be said that the agent was misled by the acceptance of the rent, or that the party defrauded intended thereby to affirm the transaction in which he and his wife were jointly interested and for a rescission of which suit was then pending.

[Ed. Note.—For other cases, see Exchange of Property, Dec. Dig. § 3.* 6 Va.-W. Va. Enc. Dig. 481, et seq.]

6. Fraud (§ 58*)—Confirmation of Fraudulent Transaction—Sufficiency of Evidence.—An affirmation must be a solemn and deliberate act, and, when the original transaction is infected with fraud, the confirmation of it is so inconsistent with justice and so likely to be accompanied with imposition that the courts watch it with the utmost strictness and do not allow it to stand but on the clearest evidence.

[Ed. Note.—For other cases, see Fraud, Cent. Dig. §§ 55-59; Dec. Dig. § 58.* 6 Va.-W. Va. Enc. Dig. 481, et seq.]

7. Contracts (§ 256*)—Waiver of Rights of Parties.—No man can be bound by a waiver of his rights unless such waiver is distinctly made with full knowledge of the rights which he intends to waive, and the fact that he knows his rights and intends to waive them must plainly appear.

[Ed. Note.—For other cases, see Contracts, Dec. Dig. § 256.* 6 Va.-W. Va. Enc. Dig. 481, et seq.]

8. Exchange of Property (§ 8*)—Fraud and Misrepresentation—Sufficiency of Evidence.—Evidence held to establish fraud and misrepresentation in procuring an exchange of property so as to entitle complaining parties to relief.

[Ed. Note.—For other cases, see Exchange of Property, Dec. Dig. § 8.* 5 Va.-W. Va. Enc. Dig. 404; 6 Id. 508, et seq.]

Judgment reversed. All the judges concur.

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.